IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10342 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMAJI CHHABAJI

Versus

SPECIAL LAND ACQUISITION OFFICER EXPRESS HIGHWAY

Appearance:

MR GM AMIN for Petitioners

MS NANDINI JOSHI, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 04/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Rule. Ms. Nandini Joshi, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents. Having regard to the facts of the case and in view of the request made by the learned counsel for the parties, the petition is taken up for hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate writ, direction or order calling upon Respondent No.1 to decide the applications submitted by the petitioners under Section 28A of the Land Acquisition Act, 1894 and redetermine the amount of compensation payable to them on the basis of judgment and award dated February 4, 2000 rendered by the learned 2nd Joint Civil Judge (Senior Division), Nadiad in Land Reference Case Nos.1179/91 to 1182/91.

3. The Executive Engineer, Express Way, Road and Building Division, Ahmedabad had forwarded a proposal to the State Government to acquire agricultural lands belonging to the petitioner and others situated at village Modaj, Taluka Mahemdavad, District Kheda for the public purpose of construction of Ahmedabad-Baroda Express Way. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Modaj were likely to be needed for the said public purpose. Therefore, Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Official Gazette on August 14, 1986. Thereafter, those persons whose lands were sought to be acquired were served with notices and they had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Kheda had forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Modaj which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of Ahmedabad-Baroda Express Way. Therefore, declaration under Section 6 of the Act was made which was published in the Official Gazette on November 18, 1986. Thereafter, the interested persons were served with notices for determination of compensation. The Land Acquisition Officer, by his award dated February 27, 1987, had offered compensation to the claimants at the rate of Rs.200/- per Are. Some of the claimants who were dissatisfied with the offer had sought references and accordingly the Special Land Acquisition Officer, Kheda had made references to the District Court, Nadiad at Kheda which were numbered as Land Reference Case Nos.1179/91 to 1182/91. The learned 2nd Joint Civil Judge (Senior Division), Nadiad by judgment and award dated February

4, 2000 has held that the claimants are entitled to compensation at the rate of Rs.1300/- per Are. Section 28A of the Act provides that where in an award the court allows to the applicant any amount of compensation in excess of the amount awarded by the Land Acquisition Officer under Section 11, the persons interested in all the other lands covered by the same Notification under Section 4(1) and who are also aggrieved by the award of the Land Acquisition Officer may notwithstanding that they had not made an application to the Land Acquisition Officer under Section 18, by written application to the Land Acquisition Officer within three months from the date of the award of the court require that the amount of compensation payable to them may be redetermined on the basis of amount of compensation awarded by the court. As the lands of the petitioners were acquired under the same Notification and as they were aggrieved by the offer of compensation made by the Land Acquisition Officer, they have submitted applications dated February 11, 2000 before the Special Land Acquisition Officer, Kheda and requested him to redetermine amount of compensation payable to them on the basis of the award of the court. The grievance made by the petitioners in the present petition is that though the applications dated February 11, 2000 are duly received by the Special Land Acquisition Officer, Kheda, he has not decided the same till date. Under the circumstances, the petitioners have filed the present petition and claimed relief to which reference is made earlier.

4. We have heard the learned counsel for the parties and considered the documents forming part of the petition. It is not in dispute that the Reference Court vide judgment and award dated February 4, 2000 rendered in Land Reference Case Nos.1179/91 to 1182/91 has enhanced amount of compensation payable to the claimants in those cases. It is also not in dispute that the lands of the petitioners were acquired pursuant to publication of the Notification under Section 4(1) of the Act on August 14, 1986. Therefore, they are entitled to file applications under Section 28A of the Act requiring the Special Land Acquisition Officer to redetermine the amount of compensation payable to them on the basis of the award of the court. The application submitted by the petitioner no.1 under Section 28A of the Act is produced by him at Annexure B to the petition and the petitioners have made a statement on oath that similar applications are made by other petitioners under Section 28A of the Act which are duly received by Respondent No.1. The record of the case does not indicate that the applications submitted by the petitioners under Section 28A of the Act are decided by Respondent No.1. Under the circumstances, we are of the opinion that interest of justice would be served if the Respondent No.1 is directed to decide those applications within the time which may be stipulated in this order. For the foregoing reasons, the petition succeeds.

Respondent No.1 is directed to decide the applications submitted by the petitioners under Section 28A of the Act as early as possible and preferably within two months from the date of receipt of the writ. Rule is made absolute accordingly with no orders as to cost. The office is directed to send a copy of this order to Respondent No.1 immediately. It will also be open to the petitioners to produce certified copy of this order before Respondent No.1 for necessary compliance. Direct Service permitted.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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